APPENDIX

TREASURY DEPARTMENT,
Washington, April 30, 1913.

Secretary McAdoo announced to-day that, beginning June 1, 1913, all Government depositaries, both active and inactive, will be required to pay interest at the rate of two per cent per annum on average monthly balances, to be credited semi-annually January 1 and July 1 of each year.

The Secretary states that, under Section 5153 of the Revised Statutes, national banks which have been or may be designated as Government depositaries, instead of placing with the Treasurer, as security for deposits, as heretofore, bonds exclusively of the United States or of the provincial Governments for the full amount of their deposits, will hereafter be allowed to secure seventy per cent of such deposits with Government bonds of the above classes and the remaining thirty per cent, at the election of the depositary bank, either with similar Government bonds at par or with high-class State, city, and county bonds, acceptable to the Secretary of the Treasury, to be taken as security at seventy-five per cent of their market value, but not to exceed par.

The Secretary has to-day authorized the transfer from the Treasury to national bank depositaries in different sections of the country of $10,000,000,

in addition to the $42,649,964, which the Treasurer of the United States already has to his credit in the various national banks.

With the banks paying interest on Government deposits, the Secretary may be justified in keeping larger balances in the national banks, thereby increasing the volume of money in circulation, and to that extent reducing the amount locked up in the Treasury.

The balance to the credit of the Treasurer of the United States in the national bank depositaries at the close of business yesterday amounted to $42,649,964, and with the $10,000,000, which the Secretary proposes to deposit, the total amount of such Government funds with national banks will be increased to $52,649,964.

The free balance in the general fund, including funds in the Treasury of the Philippines and in the national banks, amounted, at the close of business yesterday, to $141,025,263.

THE COLLECTION OF INTEREST ON PUBLIC DEPOSITS

TREASURY DEPARTMENT,
OFFICE OF THE TREASURER
OF THE UNITED STATES,
Washington,

With reference to the announcement of the Secretary of the Treasury, under date of April 30, 1913, that, beginning with June 1, 1913, all Government depositaries, both active and inactive, will be required to pay interest at the rate of 2 per cent per annum on average monthly balances, payable on January 1st and July 1st of each year, by au-

thority of the Secretary of the Treasury the regulations for the computation and collection of this interest will be as follows:

The balance on which interest will be required will include the total of the balances to the credit of the Treasurer of the United States, postmasters, United States courts and clerks of courts, and United States disbursing officers, if there be any.

Each bank will furnish the Treasurer with a sworn statement of its daily balances at the end of each month; the total of these daily balances divided by 30 will give the average balance held for the month, and the total of these six average balances divided by 6 will give the average monthly balance for the six months.

Interest will be computed on this average monthly balance for the full period of six months, or on the average for any part of the period for which the balance is held. The interest may be deposited with the Treasurer or any Assistant Treasurer of the United States or any active designated depositary bank.

Respectfully,

JOHN BURKE, *Treasurer.*

REGULATIONS GOVERNING DEPOSIT OF PUBLIC MONEYS AND PAYMENT OF GOVERNMENT WARRANTS AND CHECKS

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, December 31, 1919.

1919

Department Circular No. 176

Public Moneys

To the Treasurer and Assistant Treasurers of the United States, Federal Reserve Banks, National Bank Depositaries, Special Depositaries of Public Moneys, Collectors of Internal Revenue, Collectors of Customs, Receivers of Public Moneys, Depository Postmasters, Marshals and Clerks of Courts, all other Officers or Agents of the United States engaged in collecting, depositing, or transmitting public moneys, and others concerned:

DEPOSIT OF PUBLIC MONEYS

1. All public moneys shall be deposited with the Treasurer of the United States, Federal Reserve Banks and branches, Assistant Treasurers of the United States, and regular National bank depositaries, and, as provided in paragraph 3 hereof, with special depositaries under the act approved September 24, 1917, as amended and supplemented, all in accordance with the provisions of this circular and subject to the exceptions hereinafter provided. All deposits of public moneys hereunder (except with such special depositaries) shall be for credit to the account of the Treasurer of the United States. The term " Federal Reserve Bank " where it appears in this circular, unless

otherwise indicated by the context, includes branch Federal Reserve Banks with which deposits are authorized to be made. All collectors, receivers of public moneys of every description, and other persons having public money to pay to the United States are hereinafter sometimes called depositors of public moneys.

GENERAL PROVISIONS AS TO DEPOSITARIES

2. *Classes of depositaries.*—The established policy of the Treasury Department is to designate and maintain balances with regular National bank depositaries of public moneys only at points where a depositary is necessary to meet the requirements of Government officers for cash for pay-roll or other expenditures, and then only if there is no Federal Reserve Bank or branch located at or near the point. National banks when designated by the Secretary of the Treasury, however, may be depositaries of public moneys with a maximum qualification, for the sole purpose of receiving deposits made by United States courts and their officers, by postmasters, or by other duly authorized Government officers, for credit to their official disbursing accounts elsewhere than with the Treasurer of the United States, provided that such depositaries qualify, before receiving deposits, by pledging as collateral security for such deposits, including interest thereon, securities of the classes described in paragraph 26 hereof, to an amount, taken at the rates therein provided, at least equal to such deposits. National bank depositaries designated with a maximum qualification for this purpose alone are not thereby authorized to accept

any other deposits hereunder. Deposits arising from the proceeds of sales of bonds, notes, and Treasury certificates of indebtedness of the United States, and the payment of income and profits taxes, may be made from time to time with special depositaries of public moneys under the act of Congress approved September 24, 1917, as amended and supplemented. Other deposits of public moneys are maintained with the several Federal Reserve Banks, pursuant to the provisions of Section 15 of the Federal Reserve Act, as amended. All inactive National bank depositaries are being discontinued, pursuant to action already taken by the Secretary of the Treasury.

3. *Special depositaries.*—Any incorporated bank or trust company in the United States desiring to participate in deposits of public moneys arising from the sale of bonds, notes, or Treasury certificates of indebtedness of the United States, or from the payment of income or profits taxes, under Section 8 of the act approved September 24, 1917, as amended and supplemented, may make application for designation as a special depositary of public moneys to the Federal Reserve Bank of its district, pursuant to Treasury Department Circular No. 92, as from time to time amended and supplemented. Detailed regulations governing such depositaries are prescribed in said circular, to which reference is hereby made. The remaining provisions of this circular do not apply to or govern special depositaries under said circular, and such depositaries are not, by virtue of such designation or their qualification thereunder, authorized to accept deposits hereunder from collectors or

other depositors of public moneys for credit to the account of the Treasurer of the United States, or to the official disbursing accounts of Government officers.

* * * * *

17. *For special attention of officers of United States courts and United States attorneys.*—United States attorneys, marshals, and clerks of United States courts, who receive public moneys accuring to the United States from fines, penalties, and forfeitures, fees, costs, forfeitures of recognizances, moneys arising from unclaimed wages and effects of seamen that have remained in the registry of the courts for more than six years, unclaimed moneys remaining in court registry five years or longer, debts due the United States, interest on such debts, sales of public property, or from any other sources, except as stated below, will deposit the same in accordance with the foregoing paragraphs. Moneys collected in cases for violation of customs, navigation, equipment of motor boats, steamboat-inspection, immigration and Chinese exclusion laws should be paid to the collector of customs in the district or port in which the case arose. Fines for importation of opium or having opium in possession under act of February 9, 1909, amended January 17, 1914, should also be paid to the collector of customs. Moneys collected in criminal cases under the internal revenue laws, including fines for making smoking opium under law of January 17, 1914, or under the anti-narcotic act of December 17, 1914, should be paid to the collector of internal revenue in the district in which the case arose. But fines arising from violation of section 240, Criminal

Code, should be deposited by the clerk of court collecting same to the credit of the Treasurer of the United States. Moneys collected as damages on account of trespass on the national forests should be paid to the fiscal agent of the forest service district in which the case arose. Fines and costs should be deposited to the credit of the Treasurer of the United States. Fines collected under sections 52 and 53, Criminal Code (setting fire to timber on public lands or failing to extinguish same), should be paid to the proper county officer for the public school fund of the county where the land is situated. Costs should be deposited to the credit of the Treasurer of the United States. Moneys collected in Inlian suits involving rentals, leasing, damages, etc., of Indian property or allotments for use of the particular Indian owners, should be paid to the disbursing officer for the agency having jurisdiction over them. Costs should be deposited to the credit of the Treasurer of the United States. Moneys (including costs) collected in civil or criminal post-office cases should be transmitted to the Solicitor of the Treasury, by draft or check, made payable to the order of the Treasurer of the United States.

* * * * * * *

27. *Court and post-office funds, etc.*—National bank depositaries designated with a maximum qualification for the sole purpose of receiving deposits made by United States courts and their officers, by postmasters for credit to their official disbursing accounts, and by other Government officers authorized to maintain disbursing accounts elsewhere than with the Treasurer of the United

States are not authorized to receive deposits for credit to the account of the Treasurer of the United States. Such depositaries are required to forward to the Treasurer of the United States at the end of each week, and at the end of each month, a report on Form 17 (National Banks), showing the aggregate amounts of such deposits, and to the Secretary of the Treasury, Division of Public Moneys, at the end of each week, and at the end of each month, a report on Form 7 (National Banks), showing in detail the deposits to the credit of the local postmaster, the United States court or its officers, and other authorized special accounts. Bankruptcy funds and postal-savings deposits should not be included in these reports.

28. *Interest on deposits.*—Each National bank depositary will be required to pay interest at the rate of 2 per cent per annum on daily balances, including deposits received pursuant to paragraph 27 hereof. Interest will be calculated on an actual days' basis, and shall be paid semiannually on January 1 and July 1 in each year, 1 per cent for each six-months' period.

* * * * * * *

OTHER PROVISIONS

32. All previous regulations and instructions inconsistent herewith are hereby superseded, including, so far as inconsistent herewith, the provisions of Treasury Department Circulars No. 5, dated April 6, 1916, No. 105, dated December 27, 1917, and No. 144, dated May 20, 1919.

33. *Except as herein otherwise specifically provided, nothing contained in this circular shall be*

deemed to affect deposits by postmasters to the credit of their official disbursing accounts, *the deposit of court funds by United States courts and their officers,* or the deposit of postal-savings funds, in cases where such deposits are not for credit by the depositary in the account of the Treasurer of the United States. Unless specifically extended thereto by the Secretary of the Treasury, nothing contained in this circular shall be deemed to apply to or govern the deposit of public moneys in Federal land banks or joint-stock land banks under the act approved July 17, 1916, as amended. (Italics ours.)

34. The provisions of this circular do not apply to or govern the deposit of public moneys or the payment of Government warrants and checks outside of the continental United States, except to the extent specifically extended by the Secretary of the Treasury from time to time.

35. The Secretary of the Treasury may withdraw or amend at any time or from time to time any or all of the provisions of this circular.

CARTER GLASS,
Secretary of the Treasury.

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U. S. v. McMillan, 253 U. S. 195.

STATUTES

Revised Statutes U. S. Secs. 251, 995, 996.
Act May 30, 1908 (35 Stat. 552).

In the Supreme Court of the United States.

OCTOBER TERM, 1925

No. 348

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR.

vs.

THE MINNESOTA MUTUAL INVESTMENT COMPANY, DEFENDANT IN ERROR.

In Error to the District Court of the United States for the District of Colorado.

STATEMENT OF FACTS.

This action was brought to recover interest paid to the United States on a deposit by defendant in error, under order of court, of $15,143.92 in the registry of the United States District Court of Colorado, on June 17, 1918. The money was deposited by the Clerk in the registry fund in the First National Bank at Denver, and remained there to the credit of the Court as provided by Section 995 R. S. U. S., until

May 6, 1920, when the litigation being ended, the principal was returned to defendant in error.

Rule 20 of the Trial Court, referred to and brought into this Court in the assignments of error, required the depository bank to pay interest on the fund, to be added to the principal.

However the Secretary of the Treasury, in 1913, promulgated a rule or regulation, requiring all Federal depositaries to pay to the Treasury interest on all public funds, including moneys deposited in the registaries of Courts, and the bank paid the interest on our money into the Federal Treasury.

Attached to the answer is a letter from the Treasury Department addressed to the bank, marked Exhibit 1 (Record page 7), which directs the bank to pay interest on "public deposits." The reply from the bank (Record page 7) consents to pay on "Government deposits." The answer goes further and alleges "all Government deposits, including court funds." (Record page 5, Fol. 13.)

The Government alleges the authority to collect this interest is conferred on the Secretary of the Treasury by the laws of the United States.

A general demurrer to the complaint was overruled and a written opinion filed (Record page 15). The United States then filed its answer to which the defendant in error filed a general demurrer, which was sustained, the Court filing a written opinion as findings of fact and conclusions of law, and referred specifically as a part thereof to the former decision (Record page 10). Judgment was thereupon entered for $571.26.

The case was then removed to this Court by the plaintiff in error.

ARGUMENT.

The argument of the plaintiff in error is based entirely upon Section 5155 of the Revised Statutes of the United States, which provides for the designations of depositaries of *public moneys* of the United States.

The Act of May 30, 1908 (35 Stat. 552) provides for rates of interest upon public funds deposited in such depositaries. Sec. 995 of Revised Statutes provides that moneys paid into the registry are to be deposited with the Treasurer of the United States or in a designated depositary of the United States in the name and to the credit of the Court.

Section 996 provides the same may be withdrawn by the Court, etc.

The complaint charges that the money in controversy here was deposited in a depositary designated by the Court and not a depositary designated by the Secretary of the Treasury. This money was private funds and not public money. It was money in *custodia legis* and held subject only to further orders of the Court.

Section 251 R. S. provides that the Secretary of the Treasury may make rules and regulations relative to public moneys and officers concerned therewith and it is now claimed that the rules and regulations of the Secretary of the Treasury promulgated in 1913 requiring interest to be paid into the Treasury upon all moneys deposited in registries of the Court have the form, force and power of the statutes of the United States.

This result may be true when the subject matter is within the jurisdiction and within the letter of some statute but there is no statute permitting any

officers of the United States to subject the interest accruing upon private funds to denomination by the United States or requiring the same to be confiscated because the funds happen to be deposited in the registry of the Court.

Judge Sanborn of this Circuit, in the case of United States v. 11,150 Pounds of Butter, 195 Fed. 657, 663, said:

> "Implied authority in an executive officer or department to repeal, extend, or modify an act of Congress may not be lawfully inferred from authority to enforce it, and a regulation of the Secretary of the Treasury, or any other executive officer, made under legislative authority to make rules to enforce an act of Congress, which has the effect to subject classes of property to forfeiture and classes of persons to fines and penalties under the act, that are excluded therefrom by the terms of the law, is unauthorized and void."

This Court In re Tyler 149 U. S. 164, where executive officers attempted to collect taxes by the distraint of property in the hands of the receiver, the Court said at page 183:

> "The maintenance of the system of checks and balances characteristic of republican institutions requires the coordinate departments of government, whether federal or state, to refrain from any infringement of the independence of each other, and the possession of property by the judicial department cannot be arbitrarily encroached upon, save in violation of this fundamental principle."

Dayton v. Pueblo Co., 241 U. S. 588.

The same rule applies to the case at bar when the Unted States thru its executive officers attempts to collect interest upon moneys in the hands of the Court.

The Government contends there is no contract here, either express or implied, and therefore the complaint does not state a cause of action. The rule is both in Federal and State Courts that where one has received money which in equity and natural justice belongs to the plaintiff he may maintain a suit therefor, as upon an implied contract, and it is not necessary that there be any actual contractual relation.

Lipman, Wolf & Co. v. Phoenix Assur. Co., 258 Fed. 544;
Gaines v. Miller, 111 U. S. 395-7;
Hill v. U. S., 149 U. S. 593, 598;
Merchants' & Miners' Bank v. Barnes, 18 Mont. 335;
Ela v. Express Co., 29 Wis. 611, 617;
Klebe, et al. v. U. S., 263 U. S. 188.

Assumpsit will lie whenever defendant has received money which is the property of the plaintiff and where the defendant is entitled by natural justice and equity to a refund.

Bayne, et al. v. U. S., 93 U. S. 643;
U. S. v. State Bank, 96 U. S. 30, 35.

In Omnia Co. v. U. S., 261 U. S. 502, 510, the Court said:

> "If under any power, a contract or other property is taken for public use the Government is liable."

Therefore, if this interest collected by the Government and paid into its treasury was not property of the United States but belonged to the fund deposited then under the foregoing authorities the United States is liable to the plaintiff under an implied contract.

In U. S. v. Mosby, 133 U. S. 273, 286, the Court held that interest recovered upon public moneys deposited in a bank belonged to the fund and, consequently, was the property of the United States. Interest is an accretion or increment of the fund and interest on a fund deposited in Court belongs to the fund.

Rhea v. Brewster, 130 Ia. 729;
South Oregon Co. v. Gage, 100 Oreg. 424;
In Re Macky's Estate, 73 Colo. 1, 7;
State v. Crook County Bank, 104 Oreg. 495;
Central Trust Co. v. New Amsterdam G. Co., 167 Fed. 983;
18 C. J. 775.

Notwithstanding the money was deposited in a designated depositary designated by the Court and not by the Secretary of the Treasury these moneys were not public funds and, therefore, did not come within the purview of the regulations of the Secretary. He could not control it without violating the Federal constitution and his attempt to control it and require the payment of interest to the Treasurer was absolutely void so far as this money is concerned.

In Branch v. U. S. 100 U. S. 673 it was claimed that moneys, the proceeds of seized cotton deposited in a designated court depositary were public moneys, and after the failure of the bank it could be claimed as a preferred obligation. The Court held that

moneys deposited in the registry of the Court were not public moneys of the United States and no one could be charged with liability for moneys which were not public funds, notwithstanding they were deposited in a designated depositary by the Clerk of the Court. Moneys in that case belonged to the Court and were simply held as a trust fund pending the litigation.

To the same effect is Coudert v. U. S., 175 U. S. 178.

In U. S. v. Ferguson, 78 Fed. 103, a man arrested charged with robbing a post office. Among other moneys taken from him was $50.60 which was his own money but was turned into the Treasury of the United States. The Court of Appeals of the Second Circuit held that it was not public money and that a suit would lie to recover it.

In Brooks v. Kerr, 223 Fed. 1016, the Fourth Circuit Court of Appeals held that a fund paid into the registry of the Court bearing interest, the owner of the fund was entitled to recover such interest as may have been collected by the Court on the fund.

In U. S. v. McMillan, 253 U. S. 195, suit was brought by the United States against McMillan, Clerk of the Federal Court in Chicago, to recover interest paid to the Clerk by the banks upon unearned portions of docket fees paid into the Clerk's office by litigants.

The opinion of the Trial Court will be found in 209 Federal, page 266. The opinion of the Circuit Court of Appeals of the Seventh Circuit in 251 Federal 55.

The Government contended that all moneys deposited by the Clerk upon which interest was allowed

were public moneys of the United States and therefore, the interest belonged to the United States. The other contention was that it was an emolument of the Clerk and therefore, belonged to the Government. In each of the courts the Government contended that interest was an increment of ownership of the money. After citing cases of U. S. v. Mason, 218 U. S. 517 and U. S. v. Hill, 120 U. S. 169 where the nature of the moneys in the hands of the Clerk were determined and held not to be public moneys, the Court at page 204 said:

> "Conclusively disposing as these cases do of the contention of the Government as to public moneys of the United States, it leaves only for consideration the question of whether the interest on the sum of the fees and emoluments deposited by the clerk in bank was in and of itself an emolument for which he was liable to account. But that question is virtually also foreclosed in view of what was held in the Mason case, since the individual character of the bank deposit as there defined and the right to make it *necessarily causes the increment of such deposit, that is, the interest, to partake of the character of the principal.*"

If it partakes of the character of the principal, then it is a part of the principal and the Government has no right or authority in the premises and is holding our money which in equity and good conscience it should repay.

I particularly call the Court's attention to the case of South Oregon Co. v. Gage, 100 Oreg. 424, a decision by the Supreme Court of Oregon where moneys paid into the registry of the Court were re-

uired, under the laws of Oregon to be deposited with he treasurer of the county who in turn deposited the noney in bank in a general account upon which the ank paid interest which was covered into the treas- ry of the county. It was held by the Oregon Court hat interest to whomsoever paid belonged to the own- r of the fund, the owner had a right to maintain a uit to recover it. The bank had not agreed to pay in- erest but in fact did pay it and it was required to urn over as a voluntary payment but only as to the mount actually paid. The argument of the Court elative to the point here in issue will be found on ages 279 and 280 of that report, and while the deci- ion of the State Court is not binding upon this Court, yet it is persuasive and in connection with the Federal cases, is conclusive.

Rule 20 of the Trial Court provides that all in- erest paid on deposits shall become part thereof. In- erest was paid on this deposit and under the rule be- omes a part of the fund. Rules of Court have the orce and effect of law.

> Rio Grande Irrig. Co. v. Gildersleeve, 174 U. S. 603, 608.

The Clerk of the Trial Court for years prior to 913 had a contract with the banks to pay interest pon all funds deposited in the bank which had been aid into the registry of the Court. I contend that his being the case, it is not necessary to plead the ontract of the clerk but under Rule 20, where inter- st was in fact paid, it became a part of the fund. The contract of the clerk was a contract made for the enefit of third parties and such contract may be en- orced by a party for whose benefit it is made.

> Hendrick v. Lindsay, 93 U. S. 143.

Upon the record, I submit that the judgment entered was correct and that the Trial Court committed no error.

Respectfully submitted,

EDWIN H. PARK,
Attorney for the Defendant in Error.